F. W. Woolworth Co. *and* United Food and Commercial Workers International Union, AFL-CIO, Local 568. Case 24-CA-4514

10 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 15 June 1982 Administrative Law Judge Arline Pacht issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

This case poses the issue of whether the merger which took place between the United Food and Commercial Workers International Union, AFL-CIO, Local 552 (Local 552) and United Food and Commercial Workers International Union, AFL-CIO, Local 568 (Local 568) was valid, and whether the Respondent's refusal to bargain with Local 568 was unlawful. The judge found that the merger was valid, holding that under established Board law it was irrelevant that the Respondent's employees were excluded from the merger vote as nonmembers.

The conclusion is contrary to the recent decision in *Amoco Production Co.*, 262 NLRB 1240 (1982), in which the Board found that a union's denial to nonmembers of the opportunity to participate in an affiliation election violated fundamental due process standards. Under the rationale of that case, we find the merger to be invalid and hence dismiss the complaint in its entirety.

We find no fault, however, with the judge's findings of fact and credibility resolutions, which we adopt.[1] The essential facts are as follows: In late spring 1980,[2] Local 552 began to organize the Respondent's employees at its Bayamon, Puerto Rico branch and on 21 April filed a petition to represent these employees. During the same period, Local 552 and Local 568 sought and received the consent of their parent International to begin merger discussions. At an organizational meeting of the Respondent's employees in April Local 552 business agent Moulert told the seven or eight employees present that a merger of Local 552 and Local 568 was probable. This subject was raised again at a meeting held on 2 July when Local 552 business agent Pabon described the merger in greater detail and invited the eight or nine persons present to attend, as observers, the General Assembly of the two locals on 27 July, where members of Locals 552 and 568 were to discuss and vote on the merger.

On 11 July, Local 552 won a representation election held among the Respondent's full-time and part-time selling and nonselling employees employed at its Bayamon branch, by a vote of 14 to 12.

On 27 July, the members of Local 552 and Local 568 voted to approve the merger of these locals, and thereafter Local 568 was declared the successor to Local 552 for purposes of collective bargaining, including representation of the Respondent's employees at its Bayamon branch.[3] The Respondent's employees were ineligible to vote on the merger because they were not yet dues-paying active members.

On 15 April 1981, after the resolution of the Respondent's objections to conduct affecting the election, Local 552 was certified as the collective-bargaining representative for the unit employees. On 12 May 1981, Local 568 notified the Respondent of its desire to begin bargaining. The Respondent refused, asserting that Local 568 was not a valid successor to Local 552.

The judge found that the merger of Local 552 with Local 568 was valid. In response to the Respondent's contention that it has no obligation to bargain because its employees were precluded from voting on the merger, she found that, under Board law, "a merger or affiliation election, if otherwise valid, is not impaired if a small group of employees is unable to vote because they were not yet union members," citing inter alia, *Montgomery Ward & Co.*, 188 NLRB 551 (1971). Thus, reasoning that the voting procedures were proper and that Local 568 was the lawful successor of Local 552, the judge concluded that the Respondent's refusal to

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note the following factual errors in the udge's decision: (1) an article discussing the merger of Local 552 and Local 568 appeared in *Carribean Business* on 17 September 1980, and not 7 September 1980; (2) the last letter sent by Local 552 to the unit employees bearing its letterhead was dated 9 September 1980, and not 4 August 1980, and (3) in Conclusions of Law 3, 27 July 1981 should read 1 August 1981.

[2] Unless otherwise stated all dates herein refer to 1980.

[3] About 50 members of Local 568 and 40 members of Local 552 attended the meeting, and the merger was approved by a vote of 89 to 2.

bargain with Local 568 violated Section 8(a)(5) and (1) of the Act. We do not agree.

In *Amoco Production Co.*, above, the Board noted that while affiliation elections need not meet the standards the Board has enunciated for its own election proceedings, there are certain due-process requirements which must be met in order to have a valid affiliation election. The Board concluded that these requirements are not met when a union denies the nonmember employees it represents the opportunity to vote in an affiliation election. In reaching this conclusion the Board overruled earlier precedent, and relied on the following language from the dissent in *North Electric Co.*:[4]

> If the Board is to accept privately conducted elections as a basis for amending Board certifications, it should be certain that minimal standards of due process be observed lest the very validity of Board certifications and elections be undermined. Granted the employees in a bargaining unit cannot be compelled to vote, they can, at the very least, be afforded *the opportunity to vote.* It appears basic to the collective-bargaining process that the election of a bargaining representative be made by the employees in the bargaining unit. In our view, therefore, a cardinal prerequisite to any change in designation of the bargaining representative is *that all employees* in the bargaining unit be afforded the opportunity to participate in such selection. [As cited in *Amoco Production Co.*, 262 NLRB at 1241.]

The *Amoco* case involved an election in which nonmembers of the independent were barred from voting on the affiliation with the International. The same principles apply, however, when, as here, there is a merger between two locals within the same International union. In both instances the certified union is replaced by a different entity from that designated by the unit employees. In both cases a factor of primary importance is whether the affected employees have had an opportunity to pass on the change of representative.[5] That a merger election involves locals of the same parent union does not diminish the impact of the change on the employees or extinguish the due-process requirement that all employees in the bargaining unit be afforded the opportunity to vote.

Here, Local 552 and Local 568 restricted the vote on the proposed merger to members and limited the participation of employees in the bargaining unit to that of observers. Because unit employees were not permitted to vote in the merger election, we find the merger was invalid, and therefore the Respondent did not violate Section 8(a)(5) and (1) when it refused to bargain with Local 568.[6]

ORDER

The complaint is dismissed.

[4] 165 NLRB 942, 944.

[5] See *Safway Steel Scaffolds Co. of Georgia*, 173 NLRB 311 (1968).

[6] In light of our finding that the merger of Local 552 with Local 568 was not valid, we find it unnecessary to pass on whether Local 568 was a successor to Local 552 for purposes of collective bargaining.

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge: Pursuant to a charge filed on May 19, 1971, by United Food and Commercial Workers International Union, AFL-CIO, Local 568 (hereinafter the Union or Local 568), a complaint issued on June 5, 1981, alleging that the Respondent, F. W. Woolworth Co., was in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended.

Pursuant to notice, a hearing was held before me in Hato Rey, Puerto Rico, on February 17 and 18, 1982. All parties appeared at the hearing and were afforded full opportunity to participate, to introduce and meet material evidence, and to engage in oral argument.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, has maintained an office and a place of business at the Bayamon Shopping Center in Bayamon, Puerto Rico, and at various other locations in the Commonwealth of Puerto Rico, where it is and has been all material times herein engaged in the retail sale of merchandise, dry goods, and related products. During the past 12 months, a period representative of its annual operations, the Respondent, in the course and conduct of its business, derived gross revenues in excess of $500,000. During this same period of time the Respondent purchased and caused to be transported and delivered to its places of business merchandise, dry goods, and other goods and materials valued in excess of $50,000 which were transported and delivered to its place of business in Puerto Rico directly from points outside the Commonwealth. Accordingly, the Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party, United Food and Commercial Workers Union, AFL-CIO, Local 568, is a labor organization within the meaning of Section 2(5) of the Act.

II. PRIOR PROCEEDING BEFORE THE BOARD

A. *The Representation Proceeding*

On April 21, 1980,[1] Retail Clerks International Union Local 552, United Food and Commercial Workers Union, AFL-CIO (hereinafter Local 552), petitioned for an election among all regular full-time and part-time selling and nonselling employees of the F. W. Woolworth Co. at its Bayamon store. The Local won the election held on July 11 by a vote of 14 to 12. Several weeks later, on July 27, Local 552 merged with Local 568 thereby forming the Charging Party herein.

The Respondent filed eight objections to the election, the first of which alleged, in effect, that the employees were misled in voting for Local 552 when the Union was soon to effect a merger with Local 568. After an investigation, and pursuant to the Board's Rules and Regulations, Section 102.69, the Regional Director issued a Supplemental Decision on August 27 overruling the Respondent's objections in their entirety. Subsequently, on September 25, the Board denied the Respondent's request for review of the Regional Director's decision and, on March 9, 1981, also denied the Respondent's motion for reconsideration of its request for review. Consequently, on April 15, 1981, the Regional Director certified Local 552 as the collective-bargaining representative for the above-described unit.

B. *The Unfair Labor Practice Proceeding*

On May 12, 1982, Local 568 requested the initiation of collective bargaining with the Respondent. The Respondent refused the Union's request asserting that the Local was not a valid successor to Local 552. The Union then charged the Respondent with unlawfully refusing to bargain. Thereafter, the instant complaint issued alleging in substance that since the merger on July 27 Local 568 has been the successor to Local 552 and, therefore, has been and is the exclusive bargaining representative of the Woolworth employees since the date of Local 552's certification as the employees' representative.

The Respondent filed a timely answer denying the substantive allegation of the complaint and alleging certain affirmative defenses. Specifically, the Respondent contends that the Charging Party and Local 552 purposely withheld from the Respondent, the Regional Director, and the employees in the unit described above the demise of Local 552 on July 27, 1980, in such manner as to render the votes cast in that election null and void; that Local 568 is not a successor to Local 552 in that its officers, bylaws, dues, and initiation fees differ substantially from those of its predecessor, Local 552; (3) that the Woolworth employees were precluded from voting for or against the merger; and (4) that the Regional Director's substitution in the complaint of one labor organization for another is an attempt to amend a certification in contravention of Section 102.60(b) of the Board's Rules and Regulations.

On August 3, 1981, counsel for the General Counsel filed a Motion for Summary Judgment with the Board. In responding, the Respondent renewed the defenses set forth in its answer as summarized above. On its review of the entire record, the Board observed that "There was no consideration of the actual merger and the issue of the Union's successorship in the prior representation proceeding."[2] For this reason and in light of the Respondent's contentions, the Board concluded that material issues of fact were raised which warranted denying the Motion for Summary Judgment.[3]

The Respondent next moved to reopen Case 24-RC-6466, to rescind certification, and to consolidate cases. The Regional Director's denial of this motion was affirmed by the Board on February 11, 1982.

Issues

In light of the Board's ruling on the summary judgment motion, the overriding issue here, i.e., whether the Respondent is obligated to bargain with Local 568, subsumes the following questions: (a) whether the prospective merger of Local 552 and 568 was purposely withheld from the Woolworth employees, and (b) whether by virtue of the merger between Local 552 and 568 the Charging Party lawfully succeeded to the representational rights of Local 552.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Merger Discussions*

In June 1979, the Retail Clerks International Association and Amalgamated Meat Cutters and Butcher Workmen of America merged to form the United Food and Commercial Workers International Union, AFL-CIO. Less than 1 year later, the two constituent Locals whose merger is at issue here, sought the consent of their parent International to discuss a merger between them. Pursuant to the International's authorization, the board's of directors of Local 552 and 568 met on June 29 and 30, 1980, and unanimously approved such a merger. They set July 27 as the date for a general assembly at which a resolution endorsing the merger would be presented for discussion to and vote by the membership of both Locals.

Materials concerning the merger were mailed to the members of both unions on or about July 3 and also were posted at their places of employment. Included in this distribution were a notice anouncing the time, place, date, and purpose of the assembly; a letter signed by the presidents of the respective Locals explaining in greater detail the virtues of the merger; a copy of the resolution setting forth the steps which would be taken should the merger be approved by the membership and the International; and a proposed slate of officers for the successor Union. The merger of the Locals was mirrored in this slate. Thus, the president of Local 552 was proposed as the president of the successor Union, while the former president of Local 568 was designated as the first vice president. Five other officers of Local 552 were proposed as vice presidents of an enlarge executive body for Local 568.

[1] Unless otherwise noted, all dates refer to 1980.

[2] *F. W. Woolworth Co.*, 258 NLRB 1287 (1981).

[3] Id.

B. *Local 552's Organizational Campaign*

Concurrent with the time that Local 552 began entertaining the idea of merger, it initiated an organization campaign among the Respondent's employees. In fact, on April 21, the date on which Local 552 filed a representation petition with the Board, it also wrote for the International's consent to commence merger negotiations with Local 568.

Benigno Mouliert, then Local 552's International representative and currently serving in that same capacity with Local 568, testified that he mentioned the proposed merger to seven or eight Woolworth employees who attended one of the earliest organizational meetings in April. Jose Pabon, another representative formerly with Local 552 and now serving with Local 568, discussed the forthcoming merger in greater detail at a July 2 meeting with some eight or nine Woolworth employees. At that time, he shared his view as to the advantages of merger and invited them to attend the July 27 meeting as observers.[4] Pabon related that no one at the July 2 meeting expressed dissatisfaction with the merger proposal; rather, he believed the idea was well received. He further stated that he mentioned the merger during conversations with employees when he visited the Respondent's Bayamon store.

In an effort to disprove the Union's contention that its agents informed the employees of the pending merger, the Respondent subpoenaed five of its employees, two of whom, Edna Colon Perez and Nuris Riera, testified that they were unaware of an impending merger at the time of the union election. However, Perez acknowledged that she attended only two campaign meetings in early April and Riera attended only one meeting and then for only 10 minutes. A stipulation also was received into evidence in lieu of testimony by three other employees that they too had a knowledge of a merger between Local 552 and 568 prior to the union election on July 11.

In addition, the Respondent introduced into evidence a series of letters which Local 552 sent to Woolworth employees both before and after the July 11 election which failed to allude to the merger. Moreover, the Respondent pointed out that as late as August 5, after the merger had been approved, Local 552 issued another letter to Woolworth employees on its own letterhead. After this date, however, letters to Woolworth employees, signed by former officials of Local 552, were on Local 568's stationery which bore the Charging Party's address and telephone numbers.[5]

As noted above, the election was held on July 11 with Local 552 winning by a two-vote margin. Some 4 days after the election, a photograph of the labor leaders of Local 552 and 568 appeared in the *San Juan Star*, an English language newspaper, with a caption announcing the impending merger. Another article discussing the merger appeared in the same paper on August 10 and a third similar story ran in a different Puerto Rican paper, Carribean Business, on September 7.

C. *The Merger Assembly*

Approximately 50 members of Local 568 and 40 members of Local 552 attended the July 27 merger meeting.[6] No Woolworth employees were present. Minutes of this meeting, supported by undisputed testimony, establish that the terms of the merger resolution were reviewed. Then, questions posed by several members of the audience were answered prior to submitting the issue to a vote. Printed ballots were distributed to members whose eligibility was verified against master membership lists maintained by each Local. The voting took place in a small room adjacent to the main meeting hall. The voters cast their ballots one at a time, placing them into an empty sealed box. A three-man committee counted the ballots. The outcome was 89 votes for and 2 against the merger. The proposed slate of officers also was approved.

D. *The Local Consolidate*

By letter dated September 30, 1980, the International approved the merger retroactive to August 1.[7] Thereafter, Local 568 and 552 took a number of steps to perfect their union. First, Local 552 filed a terminal report with the United States Department of Labor indicating that all of its assets; that is, moneys, automobile, office furniture, and equipment, were transferred to the surviving Local. Employers with whom Local 552 and 568 had collective-bargaining agreement also were notified of the merger. A letter typical of those sent to such employers represented that the "merger in no way shall affect the autonomy of the Local. . . . Local 568 will continue to administer the collective-bargaining agreement and will continue as the collective representative of the covered employees."

An addendum to the formal resolution of merger contains further provisions which shed light on the relationship between the successor Union and its predecessors. Thus, the agreement provides that Local 568 would assume all debts, obligations, and liabilities of the defunct Local; that members in good standing of Local 552 would automatically become members in good standing of 568 as of the date they first joined Local 552 without payment of initiation fees; and that the health and welfare trust and pension fund vested rights in Local 552 would not be altered by virtue of the merger and continued to vest under the successor Union. Still another provision specified that:

> The merger shall not be deemed to impair or otherwise affect any federal or state certification of the merged Local Union as the collective bargaining representative or agent . . . but, all rights, privileges, duties and responsibilities vested in the merged Local Union pursuant to such certifications,

[4] Since the Woolworth employees were not yet dues-paying active members, they were ineligible to vote on the merger.

[5] Prior to the merger, the address which appeared on Local 552's stationery was Ave. De Diego, num. 580, Esq. Delta Altos, Puerto Nuevo, Puerto Rico. After August 5, the letters to Woolworth employees appeared on stationery bearing Local 568's address: Edificio M-220 Carretera Militar, Villa Caparra Heights Station, San Juan.

[6] With the merger of Local 552 and 568, the Union's membership was 1100. Of this total, 591 were former members of the predecessor Local.

[7] Two weeks later, by letter dated October 15, the new president of Local 568, Diaz, advised the Regional Director of the merger.

agreements or authorizations are to be deemed vested in the successor Local Union.

The record also establishes that dues obligations and initiation fees for members of Local 552 would be unaffected by the merger, that the business agents who services the various unit employees would continue to do so, and that retirement benefits paid to members of Local 552 would continue without revision.

E. *The Respondent Refuses to Bargain*

After the Respondent's legal challenges to the election were exhausted before the Board, the Regional Director issued a Certification of Representative to Local 552 on April 15, 1981. Thereafter, by letter dated May 12, 1981, Local 568 requested a meeting between its bargaining committee comprised of Mouliert and Woolworth employee, Arlene Cintron, and the Respondent's representatives to negotiate a labor contract. The Respondent rejected the Union's request the following day, advising the Union that it would pursue its position that the Board erred in certifying Local 552 as its employees' representative.

IV. DISCUSSION

A. *Woolworth Employees Were Told of the Merger*

Contrary to the Respondent's contention, I am persuaded that many if not all of its employees were aware of the pending merger at the time of the union election. I draw this conclusion in part because I found Local 552's business agents, Mouliert and Pabon, to be essentially trustworthy witnesses. In addition, there is ample evidence which lends weight to their testimony.

Thus, the record shows uncontrovertibly that prior to the union election the Local distributed notices of the merger meeting to its membership and posted these notices in public places where Woolworth employees might likely observe them. The widespread dissemination of this material is not consistent with an effort to withhold information from the Woolworth employees.

Moreover, two prominent articles appeared in a local widely circulated newspaper announcing the merger soon after the Union election. Also, letters were sent to Woolworth employees on Local 568's stationery bearing an address and telephone number different than that which earlier appeared on Local 552's campaign literature. Again, although the news articles and letters were printed after the election, they nevertheless suggested that the Union had no interest in concealing the merger.[8] At the time these news articles and letters issued, the results of the election were far from a fait accompli, for the Respondent's objections to the election still were pending. Finally, I note that officials of both Locals warmly endorsed the merger and, judging by their photograph in the *San Juan Star*, were pleased with the event. By all accounts, their pleasure was genuine since the merger was considered a means of enhancing the Union's power and ability to serve its membership.[9]

The Respondent relies heavily on the testimony of five witnesses who uniformly maintained that they had no knowledge of the merger at the time of the union election. Although Perez probably attended the meeting at which Mouliert said he mentioned the merger, I do not find that her failure to recollect his comment is remarkable or proves that he failed to make such a settlement given all the time that has elapsed between the date of that meeting in early April 1980 and the date of the hearing. Nor is there any evidence that either she, Riera, or the three witnesses whose testimony was made the subject of the stipulation attended the July 2 meeting at which Pabon elaborated on the merger. Thus, I do not find that this testimony specifically contradicts that of Mouliert or Pabon. Significantly, the Respondent did not call us as witnesses any of the employees who were identified by union witnesses as having attend the organization meeting in April or in July when the merger was mentioned. Rather, one of the witnesses whom the Respondent subpoenaed acknowledged that she voted against the Union. The only effect information about the merger might have had on her vote, then, would have been favorable to Local 552. Without doubt, some Woolworth employees probably were unaware of the forthcoming merger. However, their lack of knowledge does not prove, as the Respondent hoped, that the balance of the Woolworth employees were similarly ill-informed.

The Respondent also stressed the omission of any reference to the merger in Local 552's campaign literature. It is true that the first formal announcement of the merger was by letter to the Woolworth employees dated October 1981. However, by early September 1980, Local 568's stationery bearing an address and telephone numbers different from those which previously appeared on the stationery used by Local 552 was employed exclusively in mailings to these employees. Clearly, the use of this stationery negates any inference of a covert intent to misrepresent the truth of the merger between Local 552 and 568.[10]

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[8] The Respondent's contention that its Spanish-speaking employees were not likely to read an English-language newspaper misses the point. The publication of these stories simply suggests that Local 552 made no effort to conceal the merger, thereby lending credence to the testimony of the two business representatives. Moreover, the Respondent's argument assumes without foundation, that none of its employees perused the *San Juan Star*.

[9] See *Reflections on Bargaining Structure Changes* by Professor H. R. Northrup in BNA's Daily Labor Reporter, Jan. 2, 1974, Nos. 1-3:

> . . . union organization in the United States is under considerable stress . . . for the mundane facts of financial realities . . . . [W]ith . . . costs rising in an inflationary period much faster than income, and with members disinclined to increase dues, many of these smaller unions do not have the finances to serve their membership adequately . . . . Consequently, we have seen quite a few union mergers, and more are likely to develop.

[10] The Respondent's suggestion that Local 552 purposely misled the Regional Director by concealing the merger prior to the union election is also lacking in merit. The Charging Party advised the Regional Director of the merger 2 weeks after official confirmation was received from the International and while the Respondent's challenge to the election was pending before the Board. Therefore, the Local could gain no advantage by withholding news of the merger.

B. *The Merger is Valid*

1. Applicable principles

The Board has long held that mergers between unions at the local or International level are valid where it is shown that the members of the constituent unions were given an opportunity to consider and vote on the proposed change through a democratic process and where the identity of the representative remains essentially unchange. See *NLRB v. Commercial Letter, Inc.*, 496 F.2d 35 (8th Cir. 1974); See *Wellman Industries*, 248 NLRB 325 (1980).

In determining whether a merger has altered the essential nature of the bargaining representative as it affects the employees, case law requires an examination of whether the new union's structure, its officials and its powers and duties vis-a-vis that membership ensures to the employees as substantial continuation of their present organization and representation. *Montgomery Ward & Co.*, 188 NLRB 551, 552–553 (1971). Accord: *Montgomery Ward & Co.*, 154 NLRB 1197 (1965), enfd. sub nom. *Retail Clerks v. NLRB*, 373 F.2d 655 (D.C. Cir. 1967). On applying these principles to the instant case, I find that the merger between Local 552 and Local 568 did not alter the essential character of the Woolworth employees' collective-bargaining representative.

2. Voting procedures were proper

As the court recognized in *NLRB v. Commercial Letter*, supra at 42, the Board has never laid down hard and fast rules for how merger elections are to be conducted. Nevertheless, the merger here was accomplished pursuant to procedures which provided sufficient guarantees of free choice and due process.

Proper advance notice was given to the members of the sister Locals well in advance of the general assembly. The vote was by secret ballot so that each participant made his choice privately. The Respondent submits, however, that the elections should have been held separately to ensure free choice for the membership of each Local and so that the members of Local 568 could not dominate the election process. The Respondent's argument is flawed for it assumes incorrectly that the membership of either Local would cast a block vote. As it turns out, of the 91 members present, only 2 opposed the merger. Although the balloting process used by the Locals may not accord precisely with the standards imposed by the Board in conducting its own elections, neither were they "so lax or so substantially irregular as to negate the validity of the election." *NLRB v. Commercial Letter*, supra at 42 quoting *Hamilton Tool Co.*, 190 NLRB 571, 575 (1971).

The resolution approved by the memberships of both Locals on July 27 recites that the consolidation was not intended to impair the certification of either constituent union. Nonetheless, the Respondent challenges the certification of Local 552, in part on the grounds that its employees were precluded from voting on the merger and thereby were denied a basic statutory right to participate in the selection of their collective-bargaining representative. However, under settled Board law, a merger or affiliation election, if otherwise valid, is not impaired if a small group of employees is unable to vote because they were not yet union members. As the Board stated in *Montgomery Ward & Co.*, supra at 553, where there is no change in the essential identity of the bargaining representative, the question of whether all the employees in the bargaining unit knew or approved of the merger becomes irrelevant. Accord: *Wellman Industries*, supra at 329; *American Enka Co.*, 231 NLRB 1335, 1337 (1977).

In *American Enka Co.*, the Board ruled that the participation of the employees was not required, in part because they were aware of the prospective merger and "presumably took this possibility into account when they cast their ballots" at a union election which occurred some 5 months prior to the merger. Id. at 1337. By the same token, since most of the Respondent's employees also were aware of the pending merger they too "presumably took this possibility into account" and cast informed ballots on July 11.

Significantly, the record is devoid of evidence that any Woolworth employee petitioned the Board for a decertification election, sought to withdraw from membership in the Local, attempted to form a rival union, or in any other way manifested opposition to the merger. For these reasons, I find no merit in the Respondent's argument that the employees' failure to participate in or ratify the merger vitiates the validity of the union election. See *National Carbon Co.*, 116 NLRB 488, 497 (1956), affd. 244 F.2d 672 (6th Cir. 1957).

3. The Union is the lawful successor to Local 552

Evidence abounds in this record that the merger of Local 552 with Local 568 was accomplished in a manner which neither significantly affected the identity and continuity of the certified bargaining representative nor altered its relationship to the Woolworth employees.

The merger did less to dilute the numbers and influence of Local 552 as to strengthen it. Thus, Local 552 had a membership of 591 which constituted a majority of the 1100 total membership of the Charging Party at the time of the merger. This fact pattern compares favorably with that in *Montgomery Ward*, supra, where the Board approved an amendment of certification subsequent to a merger between a small 50-member local with a much larger local of some 11,000 members. See also *F. W. Woolworth Co.*, 194 NLRB 1208, 1209 (1972), where the Board held that the merger between a local with only 162 members and only 13 in the unit under consideration, with another local having approximately 1950 members was not determinative in ascertaining whether the basic identity of the collective-bargaining representative would remain the same. That Local 552's executive board assumed 6 of the 11 positions on the Charging Party's board of directors, including the presidency, lends further proof of a continuity in leadership as well as its continuing influential position in the new Union. In addition, the transfer of Local 552's assets, liabilities, obligations, furniture, and other properties must be viewed as factors tending to preserve, if not enhance, the financial stability of both unions.

Moreover, membership in the one organization automatically conferred membership in the other without any loss of seniority; the dues structure for both organizations remained intact and vested rights in health and pension plans were transferred from Local 552 to Local 568 without detriment to any union member's interests. Local 568 did adopt new bylaws subsequent to the merger which were more detailed than those which previously governed Local 552. However, on comparing the two sets of bylaws, I find no obligation imposed by the Charging Party's charter which is inconsistent with the provisions which previously governed Local 552. In short, continuity in all the rights and privileges of membership in Local 552 were preserved after the merger.

Further, collective-bargaining agreements negotiated by Local 552 remained in effect; ratification of new contracts continues to repose in the individual bargaining units. For the most part, the business agent previously assigned to various groups of employees continues to service them. In this regard, it is noteworthy that Mouliert, formerly Local 552's business agent who worked closely with Woolworth employees during the election campaign, was assigned primary responsibility for negotiating a collective-bargaining agreement with the Respondent.

The Respondent's attempt to interpose its employees' purported interests appears to be little more than a device to frustrate their expressed desire for union representation. However, that attempt may not prevail for, on the facts recited above, there can be no doubt that the consolidated Union was intended to and is functioning as a continuation of its constituent parts; the Charging Party is the lawful successor to Local 552.[11] As such, the Respondent may not evade its obligation to bargain with the Union as the duly elected representative of its employees. See *Wellman Industries*, supra. Consequently, the Respondent's refusal to recognize or bargain with Local 568 constitutes a violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. F. W. Woolworth Co. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers International Union, AFL-CIO, Local 568, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since July 27, 1981, Local 568 has been a successor to Retail Clerks Union, Local 552, affiliated with United Food and Commercial Workers International Union, AFL-CIO, succeeding to all certification rights of its predecessor.

4. The foregoing labor organizations constitute a single continuing entity, herein identified as the Union.

5. All regular full-time and part-time selling and nonselling employees employed by the Employer at its Bayamon Shopping Center Store, Bayamon, Puerto Rico, including cafeteria employees, but excluding all managerial personnel, the store manager, assistant store manager-trainee, restaurant manager, personel supervisor, professional personnel, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act.

6. The Union was and is, at all times relevant herein, the exclusive bargaining representative of the employees in the unit above-described for purposes of collective bargaining with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment within the meaning of Section 9(a) of the Act.

7. By refusing since on or about May 13, 1981, to meet and bargain in good faith with the Union as the representative of its employees in the unit above-decribed, the Respondents thereby violated Section 8(a)(5) and (1) of the Act.

8. By the foregoing conduct, the Respondent also has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, it is recommended that the Respondent recognize and upon request bargain with the Union through its designated agents, as the exclusive representative of all employees in the unit herein found to be appropriate for the purpose of collective bargaining, with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

[Recommended Order omitted from publication.]

[11] The Company's contention that the Regional Director de facto amended the Certification of Representative in contravention of Sec. 102.60(b) of the Board's Rules and Regulations by substituting Local 568 for Local 552 as the Charging Party in the complaint is without merit. It is well settled that the Board may use an unfair labor practice hearing to expand on and correct deficiencies in a representation case. See, e.g., *NLRB v. Bata Shoe Co.*, 377 F.2d 821 (4th Cir. 1967), cert. denied 389 U.S. 917 (1967), where the court held that all that due process of law requires is that there be a hearing at some stage of the administrative proceeding before objecting parties' rights can be affected by an enforcement order. The same principal is equally applicable here where the employer was accorded a sufficient hearing to raise any concerns as to the substitution of Local 568 for Local 552.